IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(2)

Description of Case

W.P. No. 1347 (S/S) of 2006

Date of decision :- 28-10-2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date :- 28-10-2006 Initials of judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 1347(S/S) of 2006

Balbir Singh Bisht
S/o Late Shri Hari Singh Bisht
At present posted as Veterinary Pharmacist
Veterinary Hospital, Prem Nagar
District – Dehradun ……Petitioner

Versus

1. State of Uttaranchal through its Secretary Animal Husbandry, Govt. of Uttaranchal, Dehradun

2. Additional Director, Animal Husbandry, Gopeshwar, Camp Office Pashuloke (Rishikesh), District – Dehradun

3. Deputy Director, Animal Husbandry Garhwal Region, Pauri, District Garhwal… Respondents

Mr. I.P. Gairola, learned counsel for the petitioner.
Sri Paresh Tripathi, learned standing counsel for the respondents/ State.

Per Hon'ble J.C.S. Rawat, J.

1. By means of this writ Petition, moved under section 226 of the Constitution of India, the petitioner has sought the following reliefs:-

(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned adjustment order dated 14.08.2006 (Annexure No.3) passed by the respondent No.3.

(ii) To issue a writ, order or direction in the nature of mandamus commanding/directing the respondents not to give effect to the impugned adjustment order dated 14.08.2006 (Annexure No.3) passed by the respondent No.3.

(iii) To Pass any other order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case be passed in favour of the petitioner.

(iv) To award the cost of present writ petition in favour of the petitioner.

2. The petitioner was serving at Kaljikhal, District-Pauri Garhwal as a Veterinary Pharmacist w.e.f. March, 1987. He made request for transfer nerarby Dehradun city. His representation was allowed and he was transferred from Kaljikhal, District – Pauri Garhwal to Prem Nagar, District Dehradun on 10th July, 2006. Thereafter, the respondent No. 3-Deputy Director, Animal Husbandry, Garhwal Region, Pauri District Garhwal had again issued an adjustment order dated 14.08.2006 asking the petitioner to report from Veterinary Hospital, Prem Nagar, District Dehradun to Sahiya, District Dehradun. It was pleaded that the transfer order has been implemented, as such, the transfer order could not be cancelled. It was further pleaded that the petitioner had not been transferred and he had been adjusted at Sahiya without making proper transfer order. The petitioner had sought the quashment of the said transfer order.

3. Heard Sri I.P. Gairola, learned counsel for the petitioner; Sri Paresh Tripathi, learned standing counsel for the respondents/State and perused the record.

4. It was contended on behalf of the petitioner that the petitioner was transferred from District Pauri Garhwal to Prem Nagar, District Dehradun on his own request vide order dated 10th July, 2006. In pursuance of the said order, the petitioner reported his duties on 18.07.2006 at Prem Nagar, District Dehradun. It was further contended that the respondent No. 3 had issued adjustment order of the petitioner as per the order dated 14.08.2006 transferring the petitioner from Veterinary Hospital, Prem Nagar, District Dehradun to Sahiya, District Dehradun. It was further contended that the petitioner had been transferred from Pauri Garhwal to Prem

Nagar on his own request, as such, he was not given the T.A. for joining at Prem Nagar, District Dehradun. It was further contended that the petitioner had been asked to report his duties at Sahiya, District Dehradun without any transfer order and he has been adjusted at Sahiya, District Dehradun. The petitioner had been denied of T.A. from Prem Nagar to Sahiya. Learned counsel for the respondents refuted the contention and contended that Gautam Lal Arya who was posted at Prem Nagar filed a writ petition before this court and this court in its order directed the authorities concerned to consider the case of the petitioner for being posted nearby Dehradun. The said representation was considered and Gautam Lal Arya was posted at Prem Nagar in pursuance of the order of the Court. It was further pointed out that the impugned order was passed by the respondent No. 3 without making any proper transfer and without giving T.A. to the petitioner from Prem Nagar to Sahiya. It would have been just and proper for the authorities to transfer the petitioner from Prem Nagar to Sahiya in place of the adjustment. The adjustment made in the said order reveals that the petitioner had been deprived of getting T.A., as has been provided under the rules. The petitioner had a right to seek the remedy of getting T.A. from the Court. That right is his enforceable right, as such, it cannot be denied. If the petitioner was transferred from Pauri Garhwal to Dehradun on his own request and he was posted at Prem Nagar, Dehradun but due to some unavoidable circumstances he has been sent to some other place. In that case, the authority should have given him T.A. as per the rules under the financial hand book. Thus the order with regard to non-payment of T.A. is liable to be set aside.

5. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provisions (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievances sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer or servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely. The administrative guidelines cannot also be enforced, as they do not confer any legally enforceable rights, unless, as noticed have been shown to be vitiated by mala fides or is made in violation of any statutory provisions.

6. Any person serving within the State of Uttaranchal, his services are subject to transfer from one place to other. It has been held in **Shilpi Bose (Mrs) and others Vs. State of Bihar and others** reported in **1991 Supp (2) SCC p/659** that the appellants who were the lady teachers were transferred of their desired places where their husbands were posted. The contesting respondents, who were displaced by the appellants challenged the validity of the transfer order before the High Court by filing a writ petition under Article

226 of the Constitution, which was allowed and the transfer orders were quashed. The Apex Court while allowing the appeal set aside the judgment of the High Court by observing as under :-

> *"In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department." If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."*

7. In the case **Union of India and others Vs. S.L. Abbas (1993) 4 SCC p/357**, the respondent was transferred to Pauri, Uttaranchal. He challenged the transfer order before the Central Administrative Tribunal on the medical ground and also on the ground of violation of the guidelines issued by the Government of India. The central Administrative Tribunal allowed the petition and quashed the transfer order. However the Apex Court allowed the appeal and set aside the order of the Central Administrative Tribunal and observed as under:

> *"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by*

the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

8. The masters and servants cannot be permitted to play hide and seek with the law. The plain and proper criteria are not to misdirect by terminological cover ups or by appeal to psychic processes but must be grounded on the sustantive reason for the order. The court will find out from other proceedings or document connected with formal order of the transfer what the grounds for the transfer was. The instant transfer was necessitated due to the order of the Court to consider the representation of Mr. Gautam Lal Arya. The order, though implemented can be interfererred by the authorities.

9. The petitioner is directed to give his representation to the respondents for the payment of T.A. from Pauri Garhwal to Prem Nagar, Dehradun and from Prem Nagar, Dehradun to Sahiya. The authorities concerned will decide the representation of the petitioner in the light of the observation made in the judgment for the payment of the T.A. and other transfer allowances admissible to the petitioner in accordance with the rule within a period of 15 days from the date of receipt of certified copy of the order.

10. So far as the impugned adjustment order is concerned, I do not find any ground for interference. Therefore, the impugned adjustment order dated 14.08.2006 by which the petitioner was transferred from Prem Nagar, Dehradun to

Sahiya, Dehradun is confirmed. Therefore, the writ petition is dismissed accordingly. The parties shall bear their own costs.

11. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

28th October, 2006
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